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Supreme Court, U.S
FILED
FEB 7 - 2011
OFFICE OF THE CLERK

Docket No. 10-678

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In The
SUPREME COURT OF THE UNITED STATES

GREGORY S. HOLLISTER, et al.,

Petitioner

v.

BARRY SOETORO, et al.,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR REHEARING

John D. Hemenway
Counsel for Petitioners
4816 Rodman Street, N.W.
Washington, D.C. 20016
(202) 244-4819
johndhemenway@comcast.net

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PETITION FOR REHEARING

In accordance with Rule 44 of this Court, the petitioners respectfully suggest that it is an intervening circumstance of substantial import that after the petitioners filed their cert petition but before it was denied without comment, the petitioners filed a motion with the Court for the recusal of Justices Sotomayor and Kagan from any decision on the cert petition. The time for a response to that motion under the rules of this Court passed prior to the petition being considered at Conference and denied without comment; during that time the respondents did not oppose the motion. Petitioners would request the Court to rehear their petition and in doing so to consider the consequences of their motion for recusal of December 30, 2010 being treated as conceded because it was not opposed in a timely fashion under the Rules of this Court.

Rule 21 (4) of the Court requires that any motion shall have an opposition to it filed, if one is to be filed, "as promptly as possible considering the nature of the relief sought...and, in any event, within ten days of receipt...." Thus by January 14, 2011, when petitioners' petition was denied without comment, the respondents had failed to respond to the motion. Therefore, as a matter of due process of the Court, petitioners suggest that the Court should have on that day considered the possibility that the motion had been conceded by respondents with an examination of the consequences of that failure. Petitioners' motion for recusal was, as certified, mailed to opposing counsel and filed with the Court on December 30, 2010.

If petitioners are entitled to have their motion for recusal as conceded because of lack of a timely opposition, as petitioners contend is the case, then the Court was obliged to make sure that the Justices Sotomayor and

Kagan did not participate in the decision. Yet there was no statement that they did not participate.

A further significant part of that concession is the concession that the precedent set by Mr. Justice Story in *Shanks v. Dupont*, 28 U.S. (3 Pet.) 242 (1830) should be treated as conceded as having to be adhered to in this case. That means that the Court should have considered that the common law of England, referred to by Justice Story in that opinion as mere "municipal law" should have been disregarded by the Court in favor of considering that the Framers of the Constitution looked to the law of nations on matters of citizenship such as the phrase in question here as placed in Article II, Section 1, Clause 5, namely, the requirement that a President "be" a "natural born citizen." This in turn calls into consideration the opinion of Chief Justice John Marshall in *The Venus*, 12 U.S. (8 Cranch) 253 (1814), as concurred in by Justice Livingston, with its full quote from Vattel on the meaning of the phrase and the other authorities such as St. George Tucker and the founder Daniel Ramsay referred to by the petitioners in this case. Thus, it would seem, with all due respect, that if the Court is required to and does treat the petitioners' Motion for Recusal as conceded the Court would be required to consider the intent of the Framers of the Constitution in choosing the Article II phrase "natural born citizen" as they did. See App. 114 ff. That is, of course, assuming that the majority of its members still believe that the intent of the Framers is essential to the constitutional rule of law in this country.

Other intervening circumstances of substantial impact include the public events surrounding the election of the former Hawaii Congressman Abercrombie (D) to the governorship of Hawaii. As he assumed office, he loudly proclaimed publicly in the press that he was going to end the "birther" controversy over the question of the respondent Obama having been born in Hawaii, only to have his efforts in that regard completely fizzle with reports that he had to acknowledge that there was no proof of the fact of the respondent's having been born there as backed by other reports in the press and a sworn affidavit by a former official of the Hawaii Department of Vital Statistics, that it was common knowledge in that department when he worked there that there was no such proof. This accentuates the question presented by petitioners that the allegations of the complaint in this case were not taken as true for purposes of a Rule 12(b)(6) dismissal as required by the controlling precedent of this court and the error in not accepting the formal motion of the petitioners for judicial notice of the territorial statutes governing in Hawaii at the time, whose laxity and loopholes allowed such things as the issuance to Sun Yat Sen, the Chinese nationalist leader, of the same type of document that the respondents have claimed on the internet and from the White House "proves" that the respondent Obama was born in Hawaii. In the Court of Appeals petitioners requested the court to take judicial notice of the territorial statutes in effect in Hawaii at the time and take note of their laxity and loopholes. That motion was denied as irrelevant but these intervening events show that that was error.

The relevant portions of those territorial statutes can be found at Appx. p. 37 ff.

Perhaps the most extraordinary intervening events that have occurred concern the overwhelming assault upon the constitutional rule of law in this country by the respondent Obama and those working for him. In the case of their illegal ban on offshore drilling, they have been actually found in civil contempt by Judge Martin Feldman after they exceeded their authority and that judge struck down the ban as a result. They immediately came back and instituted a further illegal ban, showing no respect for the rule of law at all. USDC-EDLA, Case No. 2:10-01663, *Hornbeck Offshore Services, L.L.C. v. Kenneth Lee ("Ken") Salazar, et al.* See the ABC news account as taken from Associated Press http://abcnews.go.com/Business/wireStory?id=12827405.

In the case of the recent decision by federal Judge Vinson in Florida declaring the respondent Obama's health care law unconstitutional and denying an injunction because the judge held the declaratory judgment served the same purpose, the respondent Obama and those working for him have made it clear that they intend to ignore the decision and proceed as if they never opposed it vigorously in court and the decision never happened. USDC-NDFL, Case No. 3:10-cv-91 (RV/EMT), *State of Florida, by and through Attorney General Pam Bondi, et al., v. U.S. Department of Health and Human Services, et al.*. See Scribd at http://www.scribd.com/doc/47909640/vinsonruling1-31-11

Thus, we have not exaggerated in presenting the question of the constitutional rule of law being at stake in this matter. A man has successfully run for the office of President and has done so, it appears, with an awareness that he is not eligible under the constitutional requirement for a person to be President. Despite a vigorous campaign that he has conducted to make "unthinkable" the very idea of raising the issue of his eligibility under the Constitution to "be" President the issue has not gone away. Instead it has steadily grown in the awareness of the public. Should we be surprised that he shows no respect for the constitutional rule of law? What else would we expect? The real question here is one of getting members of the judiciary to take seriously the oath that they swore to protect and preserve the Constitution. To continue to avoid the issue will destroy the constitutional rule of law basis of our legal system when it is under vigorous assault as surely as if the conscious decision were made to cease preserving and protecting our founding charter. The truth will come out.

Respectfully submitted,

John D. Hemenway
Counsel for Petitioners
4816 Rodman Street, N.W.
Washington, D.C. 20016
(202) 244-4819
johndhemenway@comcast.net

CERTIFICATION OF GOOD FAITH

I HEREBY CERTIFY that I am filing this PETITION FOR REHEARING in good faith, and with no intention of delaying proceedings.

John D. Hemenway

Dated: February 8, 2011